

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

OLGA SALAZAR, Personal Representative  
of the Estate of JESUS MARQUEZ,

Plaintiff,

vs.

No. CIV 15-417 JB/LF

Consolidated with: No. CIV 15-439 JB/LF  
No. CIV 15-497 JB/LF  
No. CIV 15-526 JB/LF

SAN JUAN COUNTY DETENTION  
CENTER, et al,

Defendants.

**ORDER DISMISSING ALL FEDERAL CLAIMS AGAINST DEFENDANT  
SAN JUAN REGIONAL CENTER WITH PREJUDICE  
IN 1:15-CV-00439 JB/LF**

This matter comes before the Court on the *Motion* of Defendant San Jan Regional Medical Center (SJPMC) to dismiss all federal claims against it in Cause No. 1:15-cv-00439-JB-LF. The *Motion* was filed on October 15, 2015. Plaintiffs filed their *Response* on November 6, 2015. In their *Response*, Plaintiffs stated that they approve the *Motion*.

Plaintiffs' *Second Amended Complaint* alleges that SJPMC had the contractual responsibility for providing medical care at the San Juan County Detention Center (the Center) beginning February 17, 2014, and that as inmates at the Center, Plaintiffs received inadequate medical care during their incarcerations. The *Second Amended Complaint* contains 42 U.S.C. § 1983 claims against SJPMC based on alleged violations of the Eighth Amendment, claims based on alleged violations of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12134), and federal claims for declaratory and injunctive relief.

Based on its review of the allegations of the Plaintiffs' *Second Amended Complaint* and its analysis of the arguments and authorities in the *Motion*, the Court finds as follows:

1. Plaintiffs' *Second Amended Complaint* does not contain enough allegations of fact, which taken as true, meet the pleading standards established by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009) and *Kansas Penn Gaming LLC v. Collins*, 656 F.3d 1210, 1214 (10<sup>th</sup> Cir. 2011). Plaintiffs do not allege any particular custom, practice or inadequacy of training or supervision on which they base their claims against SJRMC. The *Second Amended Complaint* also contains no factual allegations on which a fact-finder could determine that any aspect of the medical treatment for any one Plaintiff, or any injury of a particular Plaintiff, violated the Eighth Amendment. As a result, the *Second Amended Complaint* does not state a 42 U.S.C. § 1983 claim against SJRMC for violation of the Eighth Amendment that is plausible on its face.

2. The allegations of the *Second Amended Complaint* specifically allege that SJRMC is a New Mexico corporation. As a private corporation SJRMC cannot be liable to Plaintiffs under Title II of the Americans with Disabilities Act. *Phillips v. Tiona*, 508 Fed.Appx. 737, 754 (10<sup>th</sup> Cir. 2013).

3. The *Second Amended Complaint* does not provide any factual allegations on which the Court could base a declaration of the future rights between each of the Plaintiffs and SJRMC, so the *Second Amended Complaint* cannot form the basis of any federal declaratory relief against SJRMC. *Ysais v. New Mexico*, 373 Fed.Appx. 863 (10<sup>th</sup> Cir. 2010), *Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248 (10<sup>th</sup> Cir. 2004).

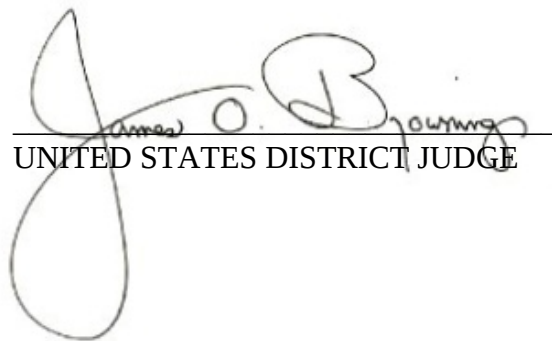
4. Since their *Second Amended Complaint* fails to state any legal claims against SJRMC based on federal law, Plaintiffs' claims for federal injunctive relief also cannot succeed. *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818 (10<sup>th</sup> Cir. 2007).

The Court also finds that Plaintiffs have not requested to amend their *Second Amended Complaint*, and that the deadline for amending their pleadings has passed for all parties, as noted

in the *Joint Status Report and Provisional Discovery Plan* filed by the parties on September 23, 2015.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that all of the claims against SJRMC in Plaintiffs' *Second Amended Complaint* based on federal law, including the claims under 42 U.S.C. § 1983 for alleged violations of the Eighth Amendment, claims based on alleged violations of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12134), and all claims for declaratory and injunctive relief, are hereby dismissed with prejudice.

All parties approve.



UNITED STATES DISTRICT JUDGE

Approved:

TUCKER, BURNS, YODER  
& HATFIELD

**approved by Gregory Tucker via email 11-12-15**

Gregory M. Tucker  
Mitchell S. Burns  
Christian A. Hatfield  
Jennifer D. Yoder  
*Counsel for Plaintiffs*

CIVEROLO, GRALOW, HILL  
& CURTIS, P.A.

**/s/ Ellen Kelly 11-12-15**

Robert J. Curtis  
Ellen M. Kelly  
*Counsel for Defendant San Juan  
Regional Medical Center*